

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:16-cv-484-RJC  
(3:08-cr-217-RJC-1)**

<b>DONALD RUSSELL SANDERS,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>vs.</b>	)	<b><u>ORDER</u></b>
	)	
<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Respondent.</b>	)	
<hr/>	)	

This matter is before the Court on Respondent’s Motion to Stay, (Doc. No. 6), seeking to hold this post-conviction matter in abeyance pending resolution of any certiorari petition in United States v. Wheeler, Fourth Circuit case number 16-6073. Petitioner had previously sought a stay pending the outcome of the Wheeler appeal in the Fourth Circuit, which is now moot. (Doc. No. 5). Petitioner’s counsel consents to the abeyance request. See (Doc. No. 6 at 2).

Petitioner filed a petition in the instant case seeking relief under 28 U.S.C. § 2255 based on Johnson v. United States, 135 S.Ct. 2552 (2015), and alternatively, under 28 U.S.C. §§ 2241 based on United States v. Simmons, 649 F.3d 237 (4<sup>th</sup> Cir. 2011).

Presently before the Court are Respondent’s Motions to stay this case pending the Fourth Circuit’s decision in Wheeler, and now, the United States Supreme Court’s decision on certiorari, if a certiorari petition is filed.

The Court finds that the disposition of this case may be affected by the outcome of Wheeler. Therefore, the Motion to Stay pending the Supreme Court’s resolution of any certiorari petition will be granted. Respondent’s earlier Motion to Stay pending the Fourth Circuit’s decision will be denied as moot.

**IT IS HEREBY ORDERED** that:

- (1) Respondent's Motion to Stay, (Doc. No. 6), is **GRANTED**. The United States shall have 30 days after the United States decides not to file a petition for writ of certiorari in Wheeler, or if a certiorari petition is filed, 30 days after is resolved by the Supreme Court, in which to file its Response.
- (2) Respondent's Motion to Stay, (Doc. No. 5), is **DENIED** as moot.

Signed: August 30, 2018

A handwritten signature in cursive script, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.  
United States District Judge

